THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition Nos.27160 & 27306 of 1997

% 23.03.2007

Between:

APSRTC Staff Co-op. Housing Construction Society Ltd., and another

…Petitioners

And

Govt. of A.P., rep. By its Prl. Secretary and others

…Respondents

! COUNSEL FOR Petitioners: Sri P.R. Prasad

^ COUNSEL FOR RESPONDENTS: G.P. for Assignments

< Gist:

> Head Note:

? CITATIONS:

1) AIR 1981 SC 234
2) 2003 (5) ALD 347
3) AIR 1990 SC 1984
4) AIR 1991 SC 1216
5) (1971) 1 All.E.R. 1148
6) AIR 1979 S.C. 798
7) AIR 1971 S.C. 862
8) (2005) 7 SCC 627
9) AIR (39) 1952 SC 16
10) 1987(2) A.L.T. 957
11) AIR 1996 SC 1643

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W.P.No.27160 of 1997

Dated 23-03-2007

Between:

APSRTC Staff Co-op. Housing Construction Society Ltd.

…Petitioner

And

Govt. of A.P., rep. By its Prl. Secretary and others

…Respondents

W.P.No.27306 of 1997

Between:

Kakani Co-op. House Building Society

…Petitioner

And

Government of A.P., rep. By its Prl. Secretary and others

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.Nos.27160 & 27306 of 1997

COMMON JUDGMENT:

In these writ petitions, the orders passed by the Government under Section 20(1) (a) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short '*the Act*') are challenged. With slight variations, as to details, the cause of action, in both the writ petitions, is broadly similar. Petitioners are Co-operative Housing Societies.

For the sake of convenience, the petitioners in the two writ petitions are referred as 1st and 2nd petitioners, respectively.

Encouraged by the policy of the Government, declared through G.O.Ms.No.136, dated 28-01-1981, which provided for transfer of declared surplus land, under the Act, in favour of

Co-operative Housing Societies; 1st petitioner purchased an extent of Ac.18.68 cents in R.S.No.174, of Gollapudi village; and

the 2nd petitioner purchased 2738 sq. meters of land in R.S.No.66/1, of Bhavanipuram Revenue Village, for the benefit of their members. Both the villages, referred to above, are part of Vijayawada Urban Agglomeration. They were granted necessary permissions, under the Act, for the purchase. In respect of the first society, exemption under G.O.Ms.No.733, dated 31-10-1988 was also extended.

Before the benefit under G.O.Ms.No.136 dated 28-01-1981 could accrue to the petitioners, the Government reversed its policy, through G.O.Ms.No.964, dated 27-06-1983. Enormous litigation resulted out of it. This Court had set aside G.O.Ms.No.964, and it is stated that the S.L.P. filed by the Government against the judgment of this Court was withdrawn. That, however, is a different aspect.

Petitioners intended to avail the benefit of exemption under Section 20(1)(a) of the Act, and accordingly made applications. The applications were processed at various stages, and favourable recommendations have been made by the authorities concerned. However, through orders dated 08-09-1997 and 03-07-1997, the

Government rejected the applications of the petitioners. The petitioners contend that, though they have made out valid case for grant of exemption, the Government rejected their applications, without any basis. The principal contention urged on their behalf is that the orders do not state any reasons, and thereby they are violative of principles of natural justice, apart from being unconstitutional.

On behalf of the respondents, counter affidavits are filed in the writ petitions. After referring to the contentions of the petitioners, it is ultimately urged that the discretion of the Government, to grant or to refuse, exemption, is absolute, and the petitioners cannot claim it, as of right. It is also their case that the necessity to state the reasons would arise, if only exemption is granted, and not when it is refused.

Sri. P.R. Prasad, learned counsel for the petitioners submits that the Act, being an expropriatory legislation, needs to be interpreted strictly, and that the only window, through which an aggrieved party was able to ventilate his grievance, is closed by the respondents, without any basis. He contends that when Parliament had conferred upon the State Government, the power to grant exemption, if necessary facts and circumstances exist, the Government cannot boast to itself, the power to indiscriminately reject all the applications, as a matter of policy. He places reliance upon certain decided cases, in support of his submissions.

Learned Government Pleader for Assignments, on the other hand, submits that the object of the Act is to ensure that the urban property does not remain in few hands, and the petitioners cannot claim any exemption under the Act, as a right. He too places reliance upon certain precedents, and submits that the power of the Government, to reject applications, without stating reasons; has been upheld on several occasions.

With an object of discouraging the concentration of urban lands, in a few hands, and to ensure proper distribution thereof, the

Parliament enacted the Act in the year 1976. The validity of the same was upheld by the Supreme Court through its judgment in ***Bhim Singhji, v Union of India***[1]. The implementation part of the Act, was left to the States or Union Territories, as the case may be. Apart from prescribing the procedure, for processing the declarations, and vesting of the excess lands in the Government, the Act provided for the grant of exemption, under Section 20, subject to certain conditions. The impact of the legislation was felt, obviously by those, who held properties in places, which came to be declared as urban agglomerations. Depending on the problems faced by the public in general, policies have been framed by the concerned Governments from time to time. The existing policy in the State of Andhra Pradesh is that a citizen can retain the excess vacant urban land held by him, on payment of market value, fixed by the Government. Such a step, the Government appears to have felt, would achieve and advance the object, underlying the Act.

Whatever may have been the justification, or the necessity for bringing about the Act, in the year 1976, the experience for the past three decades has shown that, either it did not subserve the purpose, or that it has brought about a greater social strife and unrest, than it was supposed to solve. Apart from that, the broad economic policies pursued by the successive Governments, subsequent to the Act, have also rendered the Act irrelevant, and in a way, it was treated as an obstruction in the pursuit of the policies. Obviously for that reason, the Parliament repealed the Act in the year 1999. The enforceability of the repeal, however, depended, upon the resolutions to be passed by the Assemblies of the respective State Legislatures. The State of Andhra Pradesh and its Legislature appear to have felt that, it is not in their interest to permit the ghoast (*since it was already repealed by the Parliament*) of the Act to leave the State.

Having not been able to convince the concerned authorities,

that the lands held by them cannot be treated as excess vacant lands, the petitioners have taken to the lost resort of seeking exemption under Section 20 of the Act. The provision reads as under:

> "**Sec.20**: ***Power to exempt***:- (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter—
>
> (a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;
>
> (b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:
>
> Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.
>
> (2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-sec.(1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly".
>
> The power to grant exemption vests in the Government.

On receiving the applications from the petitioners, the Government called for the remarks from the Special Officer and Competent Authority, and the Commissioner of Land Reforms and Urban Land Ceilings. Both the authorities narrated the relevant facts and opined that grant of exemptions in favour of the petitioners would not be contrary to the provisions of the Act, and on the other hand, would be in accordance with it. The Government, however, rejected the

applications of the petitioners. The order passed against the 1st petitioner reads as under:

> "Government have examined the matter in consultation with the Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada, Collector, Krishna and the Commissioner of Land Reforms and Urban Land Ceiling, Andhra Pradesh, Hyderabad and found no reason to grant exemption under section 20(1)(a) of the Act, 1976 for the land admeasuring Acs.18.68 cts., (47,267.00 sq.mtrs.,) situated in R.S.No.174, Gollapudi (v), Vijayawada Urban Agglomeration in favour of the A.P.S.R.T.C. Staff Co-operative House Construction Society Limited, Vijayawada, for providing house sites to its members and accordingly their request is rejected.

The one passed against the 2nd petitioner, is reproduced here.

> The Government have carefully examined the matter with reference to the provisions of Urban Land (Ciling and Regulation) Act, 1976 (Central Act 33 of 1976). After such examination they have as a policy decided not to grant any exemption to the land holders for transfer of surplus lands in favour of the Cooperative Housing Societies. The application of Sri Y.Bhaskara Appa Rao of Vijayawada for grant of exemption referred to in para (1) above is accordingly rejected".

While in the first case, the rejection is not supported by any reason, in the second case, it is based upon a policy decision. Therefore, it needs to be seen, as to whether such an approach of the State Government can be countenanced.

Learned Government Pleader for Revenue places strong reliance upon the judgment rendered by a learned single judge of this Court in ***Sri Sarvaraya Sugars Limited, v. Government of A.P***.[2]. In that case, the learned Judge did recognize the importance of recording reasons, in any decision making process, as is evident from paragraph 7 of the judgment. Reference was made to the judgments of the Supreme Court in ***S.N.Mukherjee v. Union of India***[3] and ***Union of***

India v. E.G. Nambudiri[4]. Heavy reliance was placed upon the latter decision, to conclude that it is not necessary for an administrative authority, to record reasons, in support of its decision.

The Supreme Court was dealing with the case relating to expunction of adverse entries made in the service book of an employee. The Hon'ble Supreme Court held, as under:

> **Para-11**: "The President was under no legal obligation to record reasons in rejecting the respondent's representation against the adverse remarks. Consequently, the order of the President was not vitiated in law…"

The above observation of the Supreme Court needs to be understood in the context of that case. A representation to expunge the adverse remarks in the service records of an employee cannot be equated to an application to avail the statutory benefit. The parameters for consideration thereof are substantially different.

The requirement to record reasons is treated as an important facet of principles of natural justice. It is only when a citizen knows the reasons that prompted the administrative or *quasi judicial* authority to pass orders, adverse to his interests, that he would be in a position, first to make up his mind, whether to assail the decision at all, and if so, the grounds to be pleaded in the challenge. In his treatise on 'Administrative Law (*Eighth Edition*), H.W.R.Wade said the following, about the importance and necessity of recording reasons in support of administrative or *quasi-judicial* decisions.

> "Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others. 'No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation

upon public authorities to give reasons for their decisions"

> "Notwithstanding that there is no general rule requiring the giving of reasons, it is increasingly clear that there are many circumstances in which an administrative authority which fails to give reasons will be found to have acted unlawfully. The House of Lords has recognized 'a perceptible trend towards an insistence on greater openness …or transparency in the making of administrative decisions' and consequently has held that where, in the context of the case, it is unfair not to give reasons, they must be given."

I n ***Breen v. Amalgamated Engineering Union***[5] Lord Denning observed that the giving of reasons is one of the fundamentals of good administration. In ***Mahindra & Mahindra Ltd. v. Union of India***[6] the Supreme Court held that a non-speaking order would be nullity on the ground that it suffers from an error of law apparent on the face of the record. Similarly, the Supreme Court observed in ***Travancore Rayons Ltd. v. Union of India***[7] that an administrative authority, exercising *quasi-judicial* powers must pass a speaking order, detailing the reasons for the same.

The Supreme Court reiterated this principle, almost periodically, if necessary by adding greater emphasis. Recently, in ***Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai***[8] this principle was reiterated in the context of the enquiry under Section 5-A of the Land Acquisition Act. It was observed that the requirement to record reasons at various stages, in the proceedings under that Act is more, since it is an expropriatory legislation.

It must be noted that the acquisition of a piece of land, under the Land Acquisition Act is for public purpose, and by paying compensation, which includes the market value, solatium and additional market value. The element of compulsion is about the owner of the land, being made part with his property, contrary to his

will. In comparison, or rather contrast, the vesting of excess land under the Urban Land Ceiling Act is virtually without any compensation, and not even for any identified public necessity. The land would be taken over by the Government only on the ground that it is in excess of ceiling limits. Therefore, the rigor as to requirement of recording reasons is bound to be acute, while rejecting an application for exemption. The proceedings under it, cannot be compared to those, dealing with the distribution of largesse, or denial of any tangible or intangible benefit, flowing from the Government.

Howsoever free, a citizen may be, to keep the reasons, that guide his conduct, to his chest; public authority, while discharging public functions, cannot claim such a freedom or privilege. There is a tendency to support an otherwise unreasoned order, by producing the record or through pleadings, filed in the Courts. More than half a century ago, Justice Vivian Bose of the Supreme Court, in his inimitable style, in ***Commissioner of Police v. Gordhandas Bhanji***[9] summed up the law on this aspect as under:

> "…Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order
> (para 10).
> "…We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or what he was in his mind or what he intended to do…" (para 9).

It is advantageous to note what H.W.R.Wade said in this context.

> "Where leave to apply for judicial review is granted the decision-maker has a duty of candour to the court and must reveal why the challenged decision was made. Thus the

> question arises whether a failure to give reasons at or about the time of the disputed decision, may be remedied by reasons given much later in the respondent's affidavit responding to the grant of leave. If the duty to give reasons is an element of natural justice, the failure to give reasons, like any other breach of natural justice, should render the disputed decision void. And a void decision could not be validated by late reasons even if they show that the decision was justified…."

There is a tendency to treat the phenomenon of exemption as being alien, and some times as opposed to the gamut of the Act. The object of the Act was presented in a very analytical manner by one of the well-read and well-informed judges of this Court. In ***Secunderabad Wholesale Cloth Merchants Association v. Government of Andhra Pradesh***[10], Justice P.A. Choudary, held that it is as much the purpose, and object of the Act, to grant exemption under the appropriate conditions, and the auspicious circumstances enumerated under Section 20 of the Act, as it is to expropriate the excess land, by paying nominal compensation under Chapter 3 of the Act. On this touchstone, His Lordship analyzed the purport of power under Section 20 of the Act as under:

> "**Para-10**: Considering the fact that the Parliament provided for both powers, it would appear to me to be reasonable to reconcile them by holding that the expropriatory provisions of the Act should be allowed to operate only on those lands that do not fall under the exemption clauses of Section 20 of the Act. It cannot, therefore, be argued that Section 20 confers unfettered discretion on the State Government and that no useful purpose would be served by giving notice to the parties in ascertaining the facts mentioned in clauses (a) & (b) of sub-sec.(1) of Section 20. On the other hand, it becomes necessary for the authority to ascertain whether particular land in a given case falls under Section 20(1) (a). The statute takes care to enumerate the circumstances under which and conditions, subject to which, exemption may be granted by the State Government. In according exemption, the provision of law requires the State Government to have regard to the

> location of land, the present and future uses of land and such other relevant factors. Undoubtedly the statute expects the State Government to examine these questions of fact before exercising its powers to grant exemption or to refuse to grant exemption in the public interest. Similarly clause (b) of Sub-section (1) of Section 20 deals with the grant of exemption on the basis of a more easily ascertainable fact of undue hardship to the owner".

Reference was made to several judgments rendered by English and Indian Courts, and treatises of jurists on administrative law. In matters of this nature, importance of settled principles of law is downplayed by taking recourse to concept of distributive justice. The following paragraph of the said judgment is

both, educative and informative, in this regard. Justice Choudary said;

> **Para 12**: We should always recall the wise words of Subba Rao, J. in Radha Shyam's case. (AIR 1959 SC 107). The great learned Judge observed in that case, "The concept of judicial act has been conceived and developed by the English Judge with a view to keep the administrative tribunals and authorities within bounds. Unless the said concept is broadly and liberally interpreted, the object itself will be defeated, that is, the power of judicial review will become innocuous and ineffective. The comprehensive phraseology of Article 226 of the Constitution supports rather negatives the liberal interpretation of that concept."
>
> A positive State is not only a requisite necessity for the growth of human liberty but it is also capable of suppressing the individual liberty. Lord Acton's apothegm that 'passion for power over other will never cease to threaten mankind' should never be forgotton. Bertrand Russel wrote in his 'The Impact of Science on society' (at p.50), 'Liberals protested, successfully, against the power of kings and aristocrats; socialists protected against the power of capitalists. But unless the power of officials can be kept within bounds, socialism will mean little more than the substitution of one set of masters for another: all the former power of the capitalist will be inherited by the official." In his 'Problem of Power' Lord Radcliff argued that at least in all English-speaking countries there is a "wry native tradition that all men abuse power and the worse for having it". Madison said, if men are angels, they

do not need Government".

One can only admire, the following conclusion arrived at by the learned Judge.

> **Para 13**: Administrative law does not consist in a few neatly drawn set of syllogism. It is a mechanism devised by great Judges to uphold the bureaucratic responsibility. Administrative law wrestles with the intractable problem of law as how to square the circle and how to ensure bureaucratic accountability. Granting of unlimited discretion to the executive sounds the death-knell of rule of law and totally destroys the purpose of administrative law.
> I accordingly hold that the Government ahs no authority to reject grant of exemption without properly ascertaining the basic facts mentioned in Section 20(1) and without applying its mind to those facts objectively ascertained by giving an opportunity to the applicants at every stage of this process. Accordingly the impugned order is set aside and the Writ Petition is allowed".

This judgment holds the field, and it is not urged that any different view has been taken on the subject.

The importance of recording reasons was recognized by the Supreme Court, while dealing with the applications under Section 20 was recognized by the Supreme Court, through its judgment in ***T.R.Thandur v. Union of India***[11]. In that case, an exemption granted under Section 20, without stating reasons, was under challenge. The Supreme Court held that grant of exemption without recording reasons is not proper. If extension of benefit under the Act was found fault with, on the only ground that the decision was not supported by reasons, denial of the benefit, without stating the reasons, in my opinion, stands on a similar, if not, higher footing, as to illegality.

From a reading of the judgment of this Court in ***Sri Sarvaraya Sugars Limited, v. Government of A.P***. (2 supra), it is evident that its attention was not drawn to the judgment of this Court in

Secunderabad Wholesale Cloth Merchants Association v. Government of Andhra Pradesh (10 supra). Therefore, I am not able to persuade myself, to be in agreement with the *dicta* in ***Sri Sarvaraya Sugars Limited, v. Government of A.P***. (2 supra). Where a Bench is faced with two judgments of opposite views, rendered by the Benches of same strength, it is free to follow the one, which accords with its view. I, therefore, prefer to follow the ratio laid down by this Court in ***Secunderabad Wholesale Cloth Merchants Association v. Government of Andhra Pradesh*** (10 supra).

On facts also, the fallacy of the decision of the Government can be demonstrated. The basis for its decision to reject the first petitioner's application is stated to be the opinion, rendered by Special Officer and Competent Authority, Urban Land Ceilings, and the Commissioner of Land Reforms and Urban Land Ceilings. The record discloses that both of them, have made positive recommendations, in favour of the petitioners. It presents either a case of non-application of mind, or of perversity of decision. Either way, it cannot be sustained.

The application of the other petitioners, was rejected on the ground that the Government has taken a policy decision, not to grant exemptions. Such a view is opposed to the very tenets of exercise of power or Rule of Law. The Government can frame and formulate its policy, in the matter of implementation of a provision of law. However, it cannot resolve, as a matter of policy, not to extend the benefit under an enactment. Such an approach would amount to abdication of power. When Parliament has chosen to vest the Government with the power, to grant exemption, that too, under piece of expropriatory legislation, any policy taken by the government, not to grant exemptions, would have the effect of subversing the very object, underlying the Act. Stretched logically, it means that the Government has decided to flout the mandate under the enactment. Therefore, the

impugned orders are liable to be set aside.

The writ petitions are accordingly allowed. The Government shall reconsider the matters afresh, in accordance with law.

There shall be no order as to costs.

L. NARASIMHA

Dt.23-03-2007
REDDY, J.

Note:
L. R. Copy to be marked.
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[1] AIR 1981 SC 234
[2] 2003 (5) ALD 347
[3] AIR 1990 SC 1984
[4] AIR 1991 SC 1216
[5] (1971) 1 All.E.R. 1148
[6] AIR 1979 S.C. 798
[7] AIR 1971 S.C. 862
[8] (2005) 7 SCC 627
[9] AIR (39) 1952 SC 16
[10] 1987(2) A.L.T. 957
[11] AIR 1996 SC 1643